

MANDATE

United States Court of Appeals For the First Circuit

No. 05-1930

MICHAEL E. ELLER,

Petitioner, Appellant,

v.

LUIS SPENCER, SUPERINTENDENT,

Respondent, Appellee.

Before

Boudin, Circuit Judge,
Selya and Howard, Circuit Judges.

JUDGMENT


Entered: September 16, 2005

Petitioner, Michael E. Eller, applies for a certificate of appealability ("COA") in order to appeal from the dismissal of his habeas petition for failure to exhaust state remedies. We have reviewed the record and petitioner's application, and we conclude that petitioner has not demonstrated "a substantial showing of the denial of a constitutional right." See 28 U.S.C. § 2253(c)(2); Slack v. Daniel, 529 U.S. 473, 484 (2000). The delay in the processing of petitioner's state appeal is not so protracted as to relieve petitioner of the obligation to exhaust his state court remedies.

The request for a certificate of appealability is denied and this appeal is terminated.

Certified and Issued as Mandate
under Fed. R. App. P. 41.

Richard Cushing Donovan, Clerk


Deputy Clerk

Date: 10/7/05

By the Court:

Richard Cushing Donovan, Clerk.

MARGARET CARTER

By: _____
Chief Deputy Clerk.

[cc: Michael Eller, Maura McLaughlin, AAG]